



A Statement of Key Positions and Public Policy Related to SDRS Retirees Returning to Work

Prepared by the
South Dakota Retirement System

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Introduction

The ability of an SDRS member to retire, go back to work for an SDRS participating employer, and then receive both an SDRS retirement benefit and a salary is a long-standing practice that has been the subject of considerable study and debate. It has recently received attention in the press again and the appropriateness of this practice questioned—particularly when the retiree returns to work with the same employer and in the same job with very little break in service.

This white paper explains the history of the current practices, the changes (attempted and accomplished) over the years, and the public policy inherent in the current practices.

History

Timeline: 1974 – From the Beginning

At its inception in 1974, SDRS provided the following benefits for retirees who returned to work with any SDRS participating employer:

- **If Retiree Returns to Work after Normal Retirement**
 - Benefits, including the cost of living allowance (COLA), paid during reemployment without adjustment
 - Rehired member treated as continuing member
 - Recalculated benefit paid at re-retirement considered all periods of employment
- **If Retiree Returns to Work after Early Retirement**
 - Benefits, including the COLA, suspended during reemployment
 - Rehired member treated as continuing member
 - Recalculated benefit paid at re-retirement considered all periods of employment

The addition and improvement of Special Early Retirement Benefits over the years permitted members to return to work after eligibility for those benefits before age 65 without a suspension in their retirement benefits.

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The provisions with regard to employment after retirement and the continuing payment of SDRS retirement benefits reflected the following public policy:

- The decision to employ a retiree was a local employer decision.
- SDRS retirement benefits could commence only upon absolute and unconditional termination of employment.
- Upon retirement at Normal or Special Early Retirement (which entitles a member to an unreduced SDRS benefit) and return to work with a participating SDRS employer, SDRS retirement benefits were not suspended.
- Upon retirement at Early Retirement (which entitles a member to a reduced SDRS benefit) and return to work with a participating SDRS employer, SDRS benefits were suspended.
- SDRS retirement benefits would not be affected in any way if a retired member became employed with any employer other than a participating SDRS employer.

In summary, the practice of “double-dipping” (the ability to receive a retirement benefit while reemployed) had been permitted in the limited circumstances described above since 1974. A uniform policy with regard to reemployment of SDRS retirees existed and allowed a member to receive both an SDRS retirement benefit and a salary from a participating employer, but only if the member retired at Normal or Special Early Retirement and returned to work.

Members who retired after Normal or Special Early Retirement were treated preferentially in this area because they had worked a complete career and could retire with full SDRS benefits with no reduction. SDRS treated members who retired at Normal Retirement Age (age 65 for most SDRS members) and those who retired at Special Early Retirement Age (as early as age 55 for most SDRS members) identically. The Social Security Administration permitted an employee who worked past Normal Retirement (entitled to unreduced benefits) to continue working and receive Social Security benefits.

Timeline: Early 1990's

The Controversy

In the early 1990's, the SDRS Board of Trustees became concerned over the adherence to the requirement that the member must actually retire (i.e. have an absolute and unconditional termination of employment) in order to receive an SDRS benefit. This was particularly a concern when a member continued in employment with the same employer in the same job with no break in employment, apparently primarily to enable the member to receive both SDRS retirement benefits and a salary for continued employment. Some employers were very willing to “deem” an employee retired and let the employee remain in the same job at

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the same pay with no obvious serious search for other candidates, while other SDRS employers would not permit retirement and reemployment. Still other employers reluctantly permitted reemployment in some instances because no suitable alternate candidate existed for the job.

Due to the different reemployment practices of the SDRS employers, the SDRS uniform policy resulted in uneven application.

In some cases the practice appeared to benefit primarily management and supervisory employees. Employers, on the other hand, stated that the practice permitted them to retain key employees in vital positions for a temporary period and they would be harmed without that ability.

In 1993, the SDRS Board of Trustees proposed to mandate a 30-day break in service for a member to be considered a terminated employee and eligible for an SDRS benefit as an attempt to strengthen the termination of employment requirement. This requirement was eliminated from House Bill 1028 by the 1993 Legislature and was not implemented.

Timeline: Late 1990's – Early 2000's

The Search for Alternatives

Beginning in the late 1990's, two other developments created additional concern over the SDRS employment after retirement provisions:

- An independent review of the System authorized by the Legislature (The Segal Report) recommended that the current policies be reviewed to consider if the employment after retirement opportunity should be available to all members regardless of employer, and
- The SDRS Board of Trustees conducted an extensive review of all SDRS benefit provisions that were resulting in unanticipated costs to the System, including the return to work provisions.

This resulted in more than three years of investigation of the current practices that included:

- Public testimony by both supporters of, and those concerned with, the current practices
- Analysis of the experience and cost of the practices
- Review of practices and trends in other public employee retirement systems
- Consideration of alternatives

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The following summarizes the Board of Trustees' findings:

➤ **Concerns over Current Policies Were Due to:**

- Misunderstanding with current policy
- Philosophical opposition to paying retirement benefits while employed, under any conditions
- Disagreement with ability to retire and immediately continue in same job with same employer
- Lack of uniform treatment because of differing employer practices
- Ability of retired member to earn additional SDRS benefits
- Tax-inefficient practice
- Current, or potential, costs to SDRS

➤ **Supporters of Current Policies Stated that:**

- Long-standing public policy had been established
- The practice is legitimate and proper since it is permitted by law
- The member has earned a benefit and is entitled to it, regardless of reemployment
- It provides employers with flexibility and an important retention tool
- Uniformity is impossible, since reemployment decision rests with each employer
- Costs are not significant

➤ **Unanticipated Costs**

Based on the experience of the prior ten years, retirees who returned to work were employed for only a short period before re-retiring—an average of 21 months.

It was estimated that the practice was resulting in unanticipated costs to SDRS of less than 1% of the total SDRS costs based on the utilization patterns.

➤ **Practices in other State Retirement Systems**

Other State systems had widely varying practices. Several systems noted that they were considering changes to accommodate retirees who returned to work because of employee retention issues of participating employers and a general shortage of available candidates for numerous positions.

It was also noted that the Social Security program permits retirees to continue to work with no penalty in their retirement benefits once they are eligible for unreduced Social Security benefits. Social Security does limit benefits for those who retire early.

Finally, employees who participate in defined contribution retirement plans in both the public and private sector have access to their retirement accounts upon termination of employment with no restrictions tied to reemployment.

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➤ Alternatives Considered

Based on the testimony, input of the Legislature, analysis, and practices in other states, the Board of Trustees focused on alternatives that would decrease or eliminate the unanticipated costs, improve the uniformity of the benefit availability, lessen inequities, and strengthen the termination of employment requirements. The following alternatives were considered and debated:

- Mandatory suspension of benefits upon reemployment
- Mandatory break in service (e.g. 30 days, 60 days, or longer)
- Require additional termination and reemployment procedures by employers
- Allow no future participation in SDRS upon reemployment
- Allow benefits to begin while employed
- Treat all members uniformly once eligible for Normal or Special Early Retirement by creating a DROP benefit

Timeline: 2002 – 2005

2002 Legislative Proposal

The Legislature (without Board of Trustee support) introduced House Bill 1093 during the session that would prohibit any future SDRS participation by a retiree who returned to work.

SDRS was concerned that this change might provide an incentive to SDRS employers and actually increase the rate of retirees who return to work since the employer would not be required to pay the employer contributions to SDRS for these employees.

House Bill 1093 passed the House, but was defeated in the Senate.

The Board of Trustees' Recommendations for Changes

The SDRS Board of Trustees made recommendations for changes to the retiree return to work provisions in December 2002 as follows:

➤ If Retiree Returns to Work After Normal or Special Early Retirement

- Benefits continued but the COLA was eliminated during reemployment
- The employee was treated as a new member for the second period of employment for all SDRS eligibility and benefit purposes

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➤ If Retiree Returns to Work After Early Retirement

- Benefits, including the COLA, continued to be suspended during reemployment
- The employee was treated as a new member for the second period of employment for all SDRS eligibility and benefit purposes

These recommendations were reflected in Senate Bill 16 introduced in the 2003 Legislative Session at the request of SDRS. An attempt to amend the bill to prohibit future participation in SDRS upon return to work was defeated in the Senate. The original bill passed the Senate but failed in the House.

The important elements of Senate Bill 16 were introduced again in the 2004 Legislative Session as part of a comprehensive package of reforms proposed by the Board of Trustees to eliminate unanticipated costs occurring in SDRS. In addition, the requirements for termination of employment were clarified and strengthened.

The recommendations were based on the belief that the inequities and lack of uniformity in the current provisions could best be addressed by making the return to work provisions cost neutral to SDRS and eliminating the unanticipated costs the System had been experiencing. In other words, the loss of the COLA to the member (except for a Class B Public Safety Member who is hired as a Class A member) and treating the member as a new employee were expected to offset the additional cost of the early payment of the retirement benefit. The change was projected to reduce the unanticipated costs of the current practice by \$20 million.

These recommendations were approved by the Legislature and the Governor effective July 1, 2004.

Key Positions and Public Policy

Through time, study, thought and actions, the SDRS Board of Trustees has developed the following revised and expanded statements of beliefs and key positions in support of its recommendations. The Board believes that they represent appropriate public policy with regard to SDRS retirees who return to work.

- Employment practices are established by each of the 458 participating employers in SDRS. Therefore, the decision by an SDRS participating employer to employ or reemploy a retiree rests solely with the employer and the employee.
- SDRS cannot – and should not – preclude a retiree from going back to work or a participating employer from hiring a current retiree. However, SDRS should not be harmed financially if a retiree returns to work.
- SDRS will not pay a retirement benefit unless a member has terminated employment, as certified by the employer, and is considered a terminated employee for all compensation and benefit practices of the employer.

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- Only members who retire with unreduced benefits at Normal or Special Early Retirement and return to work with an SDRS participating employer can receive retirement benefits while reemployed. And, these members will have their SDRS COLA eliminated during the reemployment.
- If a retired member is rehired, the second period of employment is treated independently of the first period of employment and the employee must qualify for SDRS benefits on the basis of the second period of employment only.
- SDRS practices should not favor or encourage reemployment of a retired member or employment in another state or in non-public employment at the expense of public employment in South Dakota.

The Future

The revised practices for retirees who return to work represent the best compromise among the numerous alternatives considered and protect SDRS from unanticipated costs.

The Board of Trustees will continue to monitor the experience of retirees who return to work to be sure that the expected cost neutral outcome is attained. If after review of the appropriate level of experience, this goal is not achieved, additional proposals will be developed to achieve the desired result.

In addition, SDRS will continue to assess future developments in this area in other States and report on changes in practices.

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Appendix

Current Data and Comparative Practices

Attached to this document are four exhibits. The first exhibit itemizes the perceived advantages and disadvantages of retirees returning to work. The second shows the results of a recent survey summarizing comparative practices of Retiree Return to Work provisions of various peer statewide retirement systems. The third exhibit illustrates recent experience of SDRS members participating of Retiree Return to Work provisions, and the fourth exhibit shows the total legislative history and evolution of SDRS' Retiree Return to Work practice, including failed legislative proposals.

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Exhibit 1- Advantages and Disadvantages of Retiree Return to Work Provisions

From the Employer's perspective there are many advantages to the opportunity to hire retirees, including the ability to:

- fill positions that require specific or unusual talents,
- fill positions difficult to find appropriate experienced candidates,
- temporarily fill positions for which a current candidate search is being conducted,
- allow current position holder to finish a significant project and reduce the "loss of knowledge" suffered during a change in employee,
- fill a number of positions during a "critical shortage," and
- retain valuable employees that would otherwise be lost to the private sector or employment in a different state.

To most employers, there are no visible disadvantages and, to some, this practice is considered imperative to the smooth operation of their work place.

The advantages of this practice from the perspective of the employee include the ability to:

- receive a pension and a paycheck at the same time,
- begin an SDRS benefit when the expected lifetime value is the greatest,
- assist their work place with transition to a new employee,
- temporarily fill-in while a search for a replacement is in progress,
- finish a particular project that is specific to the knowledge base of the employee, and
- help out during a "critical shortage."

This practice, although attractive to both employers and employees for all the reasons stated above, can have disadvantages including:

- being philosophically opposed by those who disagree with the ability of a working member to also receive a retirement benefit, and
- not being uniformly available to all members.

SDRS will continue to monitor these provisions and in the event these retirement utilization patterns change the Board may recommend modifications.

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Exhibit 2 - Retiree Return to Work Survey

Exhibit 2 illustrates that through time, all systems have struggled with the controversy surrounding retirees returning to covered employment and have attempted to develop rules to mitigate misuse or overuse. The following is a summary of the survey results. For a complete copy of the survey contact SDRS.

Every system surveyed has incorporated methods to limit or control the extent to which retirees are allowed to receive monthly benefit payments while returning to active employment. Eleven of the sixteen systems surveyed used a minimum period of absence to discourage the appearance of a member retiring and rehiring without leaving their desk. For example, Iowa PERS and Montana PERS, with the aid of complicated earnings limits and benefit payment reductions, allow the practice to a certain extent. In fact, all systems included in the survey had some form of earnings and/or “time worked” limits except for SDRS and Nebraska RS.

Colorado PERA allows a rehired retiree to earn a wage while receiving benefits, but only up to a limited amount of “time worked”. During this period of reemployment, the member does not accrue any additional benefit; however, the employer contributions are paid. The employer contribution requirement is the result of recently passed legislation and is unique to the field of the sixteen systems surveyed. Usually, if the member is not allowed to accrue an additional benefit, the employee and employer are not required to contribute.

Nebraska RS, with no earnings or “time worked” limits, appears to depend heavily upon their 180-day minimum absence rule (the longest of those surveyed) to dissuade over-usage of retirees returning to work, while SDRS uses the loss of COLA as their main deterrent to the practice. Also, in both cases, whether the benefits for rehired retired members were suspended or not, the reemployed retiree is required to re-qualify as a member of the system (re-vest) prior to accruing any additional benefits.

All three Minnesota Systems included in the survey provide benefits superior to SDRS in this area since they suspend benefits when limits are exceeded and pay them in a lump-sum at subsequent retirement. These systems additionally grant 6% interest while the moneys are accumulating in the designated accounts. This is essentially a DROP plan, which was considered and rejected by the SDRS Board of Trustees in the past.

SDRS is the only system in the survey that differentiates between those retiring under Normal or Special Early Retirement provisions verses Early Retirement provisions, thus tying in more closely with Social Security’s philosophy on payments to reemployed retirees.

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Exhibit 3 - Retiree Return to Work Experience

The changes made to the return to work provisions effective July 1, 2004, were expected to eliminate the unanticipated costs of the prior provisions, and over time reduce the incidence of the return to work practices. Several additional years of experience will be necessary to evaluate the expected cost neutral outcome.

The table below shows the number of members as of June 30, 2005, who are currently retired and back to work, as well as similar data from the past. It was expected that the incidence would increase dramatically for fiscal year 2004 in anticipation of the 2004 legislation.

➤ Summary of Experience

The number of retirees who had returned to work during the last five years is shown below:

July 2005	593
July 2004	581
July 2003	432
March 2002	399
March 2001	376
November 2000	383

A detailed analysis of the retirees who returned to work in 2000 indicated that 80% returned to work with the same employer, 50% returned to work within 30 days of retirement, and 67% returned to work within 90 days.

The same analysis of the retirees who returned to work in 2005 indicates that 70% returned to work with the same employer, 42% returned to work within 30 days of retirement, and 71% returned to work within 90 days.

The retirees who returned to work in 2000 made up 1.1% of the active workforce. They accounted for 1.7% of the workforce in 2005.

The practice is quite consistent throughout the SDRS membership groups.

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Retirees Back to Work

By Group

(July 2005)

	Retirees Back to Work	As a Percent of Retirees by Group	As a Percent of Active Members by Group
School Districts			
School Certified	250	4.1%	2.3%
School Classified	45	2.0%	0.8%
Total School	295	3.5%	1.8%
State Government			
Judicial	0	0.0%	0.0%
State Law (Patrol)	16	9.2%	8.1%
State Law (Other)	4	3.1%	0.6%
State General	138	3.6%	2.0%
Total State	158	3.8%	2.0%
Board of Regents			
Regents Professionals	13	1.1%	0.6%
Regents Classified	10	1.7%	0.6%
Campus Security	0	0.0%	0.0%
Total Regent	23	1.3%	0.6%
Municipalities			
Municipal General	25	2.1%	0.9%
Municipal Public Safety	33	7.7%	4.4%
Total Municipal	58	3.6%	1.6%
Counties			
County General	44	3.0%	1.5%
County Public Safety	15	9.8%	2.4%
Total County	59	3.6%	1.7%
Total SDRS Retirees Back to Work	593	3.4%	1.7%

Retirees Back to Work

By Class

(July 2005)

	Retirees Back to Work	As a Percent of Retirees by Group	As a Percent of Active Members by Group
Class A	525	3.2%	1.6%
Class B Judicial	0	0.0%	0.0%
Class B Public Safety	68	7.7%	3.0%
Total SDRS Retirees Back to Work	593	3.4%	1.7%

Class A	
Class B Judicial	
Class B Public Safety	
Total by Group	
Total SDRS Retirees	

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Retirees Back to Work

By Group

(July 2005)

	Retirees Back to Work	Returned to Same Employer	Same Employer %
School Districts			
School Certified	250	166	67.2%
School Classified	45	28	62.2%
Total School	295	194	65.8%
State Government			
Judicial	0	0	0.0%
State Law (Patrol)	16	2	14.3%
State Law (Other)	4	2	50.0%
State General	138	122	88.4%
Total State	158	126	79.7%
Board of Regents			
Regents Professionals	13	7	53.8%
Regents Classified	10	7	70.0%
Campus Security	0	0	0.0%
Total Regent	23	14	60.9%
Municipalities			
Municipal General	25	19	76.0%
Municipal Public Safety	33	13	39.4%
Total Municipal	58	32	55.2%
Counties			
County General	44	33	75.0%
County Public Safety	15	8	53.3%
Total County	59	41	69.5%
Total SDRS Retirees Back to Work	593	407	68.6%

Retirees Back to Work

By Class

(July 2005)

	Retirees Back to Work	Returned to Same Employer	Same Employer %
Class A	525	382	72.76%
Class B Judicial	0	0	0.00%
Class B Public Safety	68	25	36.76%
Total SDRS Retirees Back to Work	593	407	68.63%

Class A

Class B Judicial

Class B Public Safety

Total by Group

Total SDRS Retirees

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Retirees Back to Work

By Group

(July 2005)

	Back to Work Within 30 days	Percent of Retirees Back to Work in 30 Days	Back to Work Within 90 days	Percent of Retirees Back to Work in 90 Days
School Districts				
School Certified	73	29.2%	155	62.0%
School Classified	20	44.4%	34	75.6%
Total School	93	31.5%	189	64.1%
State Government				
Judicial	0	0.0%	0	0.0%
State Law (Patrol)	4	25.0%	5	31.3%
State Law (Other)	2	50.0%	3	75.0%
State General	75	54.3%	117	84.8%
Total State	81	51.3%	125	79.1%
Board of Regents				
Regents Professionals	2	15.4%	4	30.8%
Regents Classified	0	0.0%	4	40.0%
Campus Security	0	0.0%	0	0.0%
Total Regent	2	8.7%	8	34.8%
Municipalities				
Municipal General	16	64.0%	24	96.0%
Municipal Public Safety	16	48.5%	21	63.6%
Total Municipal	32	55.2%	45	77.6%
Counties				
County General	30	68.2%	37	84.1%
County Public Safety	7	46.7%	14	93.3%
Total County	37	62.7%	51	86.4%
Total SDRS Retirees Back to Work	245	41.3%	418	70.5%

Retirees Back to Work

By Class

(July 2005)

	Back to Work Within 30 days	Percent of Retirees Back to Work in 30 Days	Back to Work Within 90 days	Percent of Retirees Back to Work in 90 Days
Class A	216	41.1%	375	71.4%
Class B Judicial	0	0.0%	0	0.0%
Class B Public Safety	29	42.6%	43	63.2%
Total SDRS Retirees Back to Work	245	41.3%	418	70.5%

Class A
Class B Judicial
Class B Public Safety
Total by Group
Total SDRS Retirees

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Exhibit 4 - Retiree Return to Work Provisions -A Legislative Chronology

Exhibit 4 is a complete chronology of the SDRS Retiree Return to Work policies and provisions.

Enacted amendments to SDRS retired-member-returning-to-work provisions

SDCL 3-12-81.1 (2004): retired member who returns to permanent, full-time employment with a participating unit must have undergone complete termination of original employment and must have undergone a complete hiring process for the second employment, all as certified by the employer(s)

SDCL 3-12-82:

- A. 1974: retired member with more than one year of reentry service would get a “recalculated” retirement benefit based on new period of credited service and new salary, reduced because of retirement before normal retirement age
- B. 1978: cleaned up language; no real substantive change
- C. 1982: (1) added a refund of contributions if less than one year of new service; (2) “recalculated allowance” became “additional allowance”; and (3) language about reduction removed
- D. 1997: upon re-retirement, a new benefit based on all credited service and the member’s entire salary history to be calculated, including an early retirement reduction based on total credited service
- E. 1998: change in the refund amount for a retired member back to work for less than one year before re-retiring
- F. 2004: upon reemployment, three years of additional service required to receive an additional stand-alone benefit based on compensation and service during reentry, with early retirement reduction based only on new service, and with elimination of COLA on first benefit (with exceptions)
- G. 2005: three years of additional service must be contributory service or noncontributory service

SDCL 3-12-88:

- A. 1974: all benefits improved by the annual improvement factor
- B. 2004: 1974 law, except with added language creating elimination of the annual improvement factor for retirees returning to work after July 1, 2004 (with exceptions)

SDCL 3-12-111:

- A. 1974: retired member who returned to employment with a participating unit prior to normal retirement age had benefit suspended

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B. 1982: clarified that retired member had to return to permanent, full-time employment before benefit would be suspended

C. 1986: retired member who returned to permanent, full-time employment with a participating unit prior to normal retirement age would not have benefit suspended if member had reached the Rule of 85

D. 1997: after member retired the second time, new annuity calculated on basis of total credited service and final average salary from both periods of employment, with a possible actuarial reduction over member's life expectancy for benefits paid during first period of retirement

E. retired member who returned to permanent, full-time employment with a participating unit prior to July 1, 2004, with suspended benefit (and suspended COLA), and who works for at least three years, upon re-retirement receives a new, stand-alone benefit in addition to reinstated first benefit with COLAs

SDCL 3-12-111 (2004 Commission Note): retired member who returned to permanent, full-time employment with a participating unit prior to July 1, 2004, and without a benefit (and COLA) suspension, would continue to receive benefit and COLA under prior law during reemployment

SDCL 3-12-111.1 (2004): retiree with reduced benefit who returns to permanent, full-time employment with a participating unit on or after July 1, 2004, has benefit suspended and COLA eliminated, and, after three years of reemployment and upon re-retirement receives a new, stand-alone benefit in addition to reinstated first benefit

Failed proposals to amend SDRS retired-member-returning-to-work provisions

1993 (Section 2 of HB 1028): would have required a member to make no contributions for at least 30 days to be considered terminated (NOTE: provision was aimed at "weekend" terminations for refund purposes, rather than retirees returning to work)

2002 (HB 1093): would have restricted a retired member from participating again if the member returned to work for a participating unit

2003 (SB 16): Board-supported version of the legislation that passed in 2004

Retiree-returning-to-work provisions in the pre-SDRS systems

Supreme and Circuit Court Judicial Retirement System: at first, retirement benefit suspended for the practice of law or holding of public office – amended in 1973 to allow the practice of law, but judge could receive compensation from public office only to extent that it exceeded retirement benefits

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District County Court and Municipal Court Judges Retirement Program: retirement benefit suspended for the practice of law

South Dakota Teachers Retirement System: benefit of retiree who returned to teaching suspended for balance of fiscal year after retiree earned \$2,000 in that fiscal year – retiree who returned to teaching could not again participate in the system

South Dakota Municipal Retirement System: benefit of retiree who returned to employment with a participating municipality suspended for balance of calendar year after retiree earned \$2,000 in that calendar year

South Dakota Law Enforcement Retirement System: none

South Dakota Public Employees Retirement System: benefit of retiree who returned to employment with a participating unit suspended for balance of calendar year after retiree earned \$2,000 in that calendar year